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Message Text

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TO SECSTATE WASHDC 6217
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C O N F I D E N T I A L SECTION 1 OF 3 LAGOS 1247

E.O. 11652: GDS
TAGS: PGOV, PINS, PINT, NI
SUBJECT: THE CA COMPLETES WORK ON THE PRESIDENCY

REF: (A) LAGOS 730, (B) LAGOS 598

1. SUMMARY: ACCORDING TO PRESS REPORTS THE CA COMPLETED CONSIDERATION OF KEY CONSTITUTIONAL PROVISIONS CONCERNING THE ELECTION, IMPEACHMENT, AND POWERS OF THE PRESIDENT. IN A SHOW OF INDEPENDENCE THE CA REJECTED WHAT APPEAR TO BE APPEALS FROM THE MILITARY TO REMOVE RESTRICTIONS ON PRESIDENTIAL WAR POWERS AND FROM AT LEAST SOME ON THE SMC TO ESTABLISH A NATIONAL SECURITY ORGANIZATION. THE SHARIA QUESTION WAS DODGED ARTFULLY. WE ARE IMPRESSED BY THE PERFORMANCE OF THE CA IN CLOSED SESSIONS SO FAR, BUT THE REAL TEST WILL BE IN THE NEXT FEW WEEKS WHEN IT IS EXPECTED TO CONSIDER THE SHARIA QUESTION. END SUMMARY.

2. ACCORDING TO THE PRESS AFTER ALMOST THREE WEEKS OF DEBATES, CAUCUSING AND HORSE TRADING, THE CONSTITUENT ASSEMBLY (CA) HAS COMPLETED ITS REVIEW OF SECTIONS 109

TO 127 OF THE DRAFT CONSTITUTION DEALING WITH THE PRESIDENCY.
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AS REPORTED REF B THE EXECUTIVE PRESIDENCY WAS APPROVED EARLY IN THE NEW SESSION RESULTING IN PUBLIC CRITICISM OF THE CA'S ACTIVITIES BY SOME MEMBERS. MEMBERS HAVE NOT PUBLICLY COMPLAINED AGAIN, BUT POLITICKING WITHIN THE CA HAS APPARENTLY BEEN INTENSE AS REPORTED REF A.

3. THE TWO KEY ISSUES THAT OCCUPIED MOST OF THE CA'S

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TIME DURING THIS PERIOD WERE THE ELECTION AND IMPEACHMENT
OF THE PRESIDENT. DURING THESE DISCUSSIONS CA MEMBERS
APPROACHED USIS SEEKING MATERIALS ON THE AMERICAN
CONSTITUTIONAL SYSTEM. A VISITING AMERICAN PROFESSOR
SPONSORED BY USIS ALSO HAPPENED TO BE IN LAGOS DURING
THIS DEBATE AND WAS SOUGHT OUT BY A NUMBER OF CA
MEMBERS TO DISCUSS VARIOUS ASPECTS OF THE AMERICAN SYSTEM.
HIS COMMENTARY ON HOW THE AMERICAN CONSTITUTION WORKS,
ESPECIALLY WITH RESPECT TO THE ELECTORAL COLLEGE, AS WELL
AS USIS DOCUMENTARY INFORMATION, MAY HAVE INFLUENCED CA
THINKING TO A CERTAIN EXTENT.

4. ELECTION. AFTER INTENSIVE DISCUSSIONS, BOTH IN AND
OUT OF THE ASSEMBLY, THE PRESS REPORTED JANUARY 26 THAT
PROVISIONS FOR ELECTION OF THE PRESIDENT AS THEY APPEAR
IN THE DRAFT CONSITUTION WERE APPROVED. HOWEVER,
ON JANUARY 27, NEW NIGERIAN SAID THAT EARLIER
REPORTS OF HOW THE PRESIDENTIAL ELECTION WILL BE
DECIDED WERE INCORRECT. ACCORDING TO NEW NIGERIAN, IF THE
CANDIDATE WITH THE HIGHEST NUMBER OFVOTES FAILS TO
OBTAIN AT LEAST ONE QUARTER OF THE VOTES IN AT LEAST TWO-
THIRDS OF THE STATES, THERE WILL BE A RUN-OFF ELECTION.
THE RUN-OFF WILL BE HELD IN THE NATIONAL ASSEMBLY (THE
PRESIDENT, HOUSE OF REPRESENTATIVES AND SENATE TOGETHER)
AND THE HOUSE OF ASSEMBLY IN EACH STATE. THE WINNER WILL
BE DECIDED BY A SIMPLE MAJORITY. EMBASSY WILL ENDEAVOR CLARIFY
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THIS CONFUSION AS SOON AS POSSIBLE.

5. THE DRIVING FORCE BEHIND PROPOSED CHANGES IN THE
ELECTORAL SYSTEM APPARENTLY WERE IBOS LED BY SYLVESTER
U. UGOH (IMO) AND DR. JOSIAH O. OKEZIE (IMO). THEY
WANTED TO ELIMINATE THE PARTICIPATION OF THE FEDERAL AND
STATE LEGISLATURES WHICH THEY FELT WOULD GIVE DISPRO-
PORTIONATE POWER TO THE LARGER STATES. THEY WERE
ATTRACTED TO THE AMERICAN ELECTORAL COLLEGE SYSTEM,
BELIEVING INCORRECTLY IT WOULD GIVE MORE POWER
TO THE SMALLER STATES. REPORTEDLY VARIOUS MATHEMATICAL
CALCULATIONS WERE TRIED, BUT IN THE END NONE WAS FOUND
ACCEPTABLE. ONE REPORT MENTIONED THE STRONG OPPOSITION
OF THE 'MINORITY STATES CAUCUS', SUGGESTING THAT YET
ANOTHER GROUPING OF CA MEMBERS EXISTS IN ADDITION TO
THOSE REPORTED REF A.

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6. CA REPORTEDLY ADDED A PROVISION TO ELECTION RULES REQUIRING THAT AN UNOPPOSED CANDIDIATE FOR PRESIDENT MUST HAVE A MAJORITY OF 'YES' VERSUS 'NO' VOTES INCLUDING AT LEAST ONE QUARTER OF THE VOTES CAST IN TWO-THIRDS OF THE STATES. IF HE FAILS TO WIN UNDER THESE CONDITIONS, THERE MUST BE NEW ELECTIONS WITH NEW CANDIDATES.

7. A REQUIREMENT WAS ALSO ESTABLISHED THAT A WINNING CANDIDATE FOR GOVERNOR MUST RECEIVE AT LEAST ONE QUARTER OF THE VOTES CAST IN AT LEAST TWO-THIRDS OF THE LOCAL GOVERNMENT AREAS IN A GIVEN STATE.

8. TERM OF OFFICE. THE PRESIDENT HAS ALSO BEEN LIMITED TO TWO FOUR-YEAR TERMS.

9. VICE PRESIDENT AND DEPUTY GOVERNOR. THE ASSEMBLY ADDED A PROVISION THAT IF EITHER THE OFFICE OF VICE PRESIDENT OR DEPUTY GOVERNOR BECOMES VACANT, THE PRESIDENT OR GOVERNOR MAY NOMINATE A SUCCESSOR WITH THE APPROVAL OF THE NATIONAL ASSEMBLY FOR VICE PRESIDENT OR HOUSE OF ASSEMBLY FOR DEPUTY GOVERNOR.

10. IMPEACHMENT. THE DRAFT RULES FOR IMPEACH-
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MENT PROCEEDINGS WERE THROWN OUT AND NEW ONES MODELED PARTIALLY ON THE AMERICAN SYSTEM WERE APPROVED. WRITTEN ALLEGATIONS BY AT LEAST ONE-THIRD OF THE MEMBERS OF THE NATIONAL ASSEMBLY INITIATE THE PROCESS. THE

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PRESIDENT IS ALLOWED TO RESPOND AND IF TWO-THIRDS OF THE MEMBERS OF THE NATIONAL ASSEMBLY VOTE TO INVESTIGAGE THE CHARGES, THE PRESIDENT OF THE SENATE, WITH THE SENATE'S APPROVAL, APPOINTS SEVEN INDIDUALS WHO DO NOT HAVE PARTY AFFILIATION AND WHO ARE NOT MEMBERS OF EITHER PUBLIC SERVICE OR THE LEGISLATURE TO DO SO. IF THE COM-MITTEE REPORTS THAT THE ALLEGATIONS ARE NOT SUBSTANTIATED, PROCEEDINGS CEASE. IF, HOWEVER, THE COMMITTEE REPORTS THE CHARGES ARE VALID, THE ASSEMBLY HAS TWO WEEKS WITHIN WHICH TO REJECT THE FINDINGS OF THE COMMITTEE OR TO ADOPT THEM BY A TWO-THIRDS VOTE, THEREBY REMOVING THE PRESIDENT FROM OFFICE. THE IMPEACHMENT CLAUSE WAS REPORTEDLY PUSHED BY ANOTHER IBO, PROFESSOR B. O. NWABUEZE (A CONSITUTION DRAFTING COMMITTEE SUBCOMMITTEE CHAIRMAN).

11. PRESIDENTIAL POWERS. SINCE THE PUBLICATION OF THE DRAFT CONSITUTION THERE HAVE BEEN EXTENSIVE DISCUSSIONS OF THE BORAD POWERS GIVEN TO THE PRESIDENT. THE ASSEMBLY ACTED IN TWO AREAS TO RESTRICT HIS POWERS. APPARENTLY RECALLING THE CRISIS IN THE OLD WESTERN REGION IN THE EARLY 1960'S, THE CA REJECTED A PROVISION IN THE DRAFT CONSITITUION WHICH ALLOWED THE PRESIDENT TO TAKE OVER A STATE GOVERNMENT IF THE GOVERNOR OF THE STATE INFORMED HIM HE WOULD BE UNABLE TO EFFECTIVELY MAINTAIN ORDER IN THE STATE.

12. A GREATER CONTROVERSY SWIRLED AROUND THE CA'S DECISION TO ADD A PROVISION TO THE CONSTITUTION PROHIBITING THE PRESIDENT FROM DEPLOYING MILITARY PERSONNEL OUTSIDE
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NIGERIA ON COMBAT DUTY WITHOUT THE EXPRESS APROVAL OF THE SENATE. REPORTEDLY THE AMERICAN EXPERIENCE IN THE VIETNAM WAR WAS CITED AS ONE DANGER OF NOT HAVING SUCH A RESTRICTION. THIS DECISION PROVOKED A PUBLIC APPEAL FROM DR. BOLAJI AKINYEMI, DIRECTOR OF THE NIGERIAN INSTITUTE OF INTERNATIONAL AFFAIRS. CALLING FOR THE CA TO REPEAL THIS PROVISION, HE SAID HE 'FULLY APPRECIATED' THE CA'S CONCERN ABOUT THE POSSIBLE ABUSE OF THE PRESIDENT'S POWER 'AS HAS HAPPENED ELSEWHERE IN THE WORLD' BUT THOUGHT IT 'UNNECESSARILY RIGID.' HE PROPOSED THE CA ESTABLISH A WAR COUNCIL CONSISTING OF THE PRESIDENT, VICE PRESIDENT, DEFENSE MINISTER, HEAD OF THE COMBINED ARMED FORCES, THE THREE SERVICE CHIEFS, THE MINISTER OF EXTERNAL AFFAIRS, AND TEN LEGISLATORS WITH THE POWER TO COMMIT NIGERIAN TROOPS OUTSIDE THE COUNTRY SUBJECT TO RATIFICATION BY THE SENATE WITHIN 21 DAYS. THE CA REJECTED HIS PROPOSAL

13. COMMISSIONERS. SECTIONS 128 THROUGH 137 OF THE DRAFT

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CONSTITUTION PROVIDE FOR THE CREATION OF FOURTEEN COMMISSIONS
AND COUNCILS (CIVIL SERVICE COMMISSION, NATIONAL SECURITY
COUNCIL, NIGERIA POLICE COUNCIL, ETC.) IN ADDITION,
MEMBERS OF THE CA PROPOSED APPROXIMATELY 40 OTHER COM-
MISSIONS RANGING FROM ESOTERICA (COMMISSIONS FOR
THE AGE GROUP 15 TO 30) TO THE MORE RELEVANT (ATOMIC
ENERGY COMMISSION AND NATIONAL PRESS COMMISSION) IN INITIAL
REVIEW ALL OF THE ADDITIONAL COMMISSIONS WERE REJECTED AND ALL OF

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THE EXISTING ONE'S APPROVED. REPORTEDLY, THE NATIONAL
PRESS COMMISSION WAS THE SUBJECT OF LENGTHY DEBATE.
NEEDLESS TO SAY, ITS REJECTION WAS THE SUBJECT OF CON-
SIDERABLE CRITICAL COMMENTARY IN THE LOCAL MEDIA. DEBATE ON
APPOINTMENT TO AND COMPOSITION OF THESE BODIES CONTINUES.

14. NATIONAL SECURITY ORGANIZATION. IN WHAT STRIKES
US AS A RATHER UNUSUAL MOVE, THE CABINET OFFICE SENT A
MEMO TO ALL MEMBERS OF THE CONSTITUENT ASSEMBLY SIGNED BY
THE PERMANENT SECRETARY (POLITICAL), ALHAJI YAYA ABUBAKAR,
ASKING THAT A PROVISION ESTABLISHING A NATIONAL SECURITY
ORGANIZATION (NSO) 'FOR THE PREVENTION AND DETECTION OF
ANY CRIME AGAINST THE SECURITY OF NIGERIA' BE INCLUDED
IN THE CONSTITUTION. EXPLAINING THE REQUEST THE MEMO
SAID, 'PERSONNEL TRANSFERRED FROM THE SPECIAL BRANCH
OF THE POLICE (TO FORM THE NUCLEUS OF THE NSO) ARE
NATURALLY APPREHENSIVE ABOUT THEIR FUTURE, AND HAVE
EXPRESSED MISGIVINGS ABOUT THE UNCERTAINTY OF THEIR
CAREER PROSPECTS WHEN A CIVILIAN ADMINISTRATION IS

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USHERED IN IN 1979'. THE CA REJECTED THE PROPOSAL
ACCORDING TO PRESS REPORTS BECAUSE OF CONCERN OVER THE
PROPRIETY OF EMBODYING IN THE CONSTITUTION 'SOVIET-STYLE
GKB (SIC) OR AMERICAN-STYLE FBI.'
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(FYI. THE MEMBERSHIP OF THE NATIONAL SECURITY COUNCIL,
AS DESCRIBED BY THE DRAFT CONSTITUTION INCLUDES 'THE
HEAD OF THE NIGERIAN SECURITY ORGANIZATION AS BY LAW
ESTABLISHED.')

15. SHARIA COURT. THE SHARIA COURT QUESTION ALSO APPEARED
IN THE DEBATE ON THE PRESIDENCY. THE DRAFT CONSTITUTION
PROVIDES THAT THE PRESIDENT MAY BE SWORN IN BY THE CHIEF
JUSTICE, ANY OTHER JUSTICE OF THE SUPREME COURT, PRESIDENT
OF THE FEDERAL COURT OF APPEAL OR THE GRAND MUFTI OF THE
FEDERAL SHARIA COURT OF APPEAL. THE GOVERNOR OF A STATE MAY
BE SWORN IN BY THE CHIEF JUSTICE OF THE STATE, ANY JUDGE OF
THE HIGH COURT, OR THE GRAND QADI OR ANY QADI OF THE SHARIA
COURT OF APPEAL IN THE STATE. IT HAD BEEN ANTICIPATED THAT
THE PROVISIONS RELATING TO THE GRAND MUFTI AND THE QADIS
WOULD PROVIDE THE FIRST SKIRMISH IN THE SHARIA COURT BATTLE.
THE ADVOCATES OF THE SHARIA COURT, HOWEVER, OUT-MANEUVERED
OPPONENTS AND ALHAJI YAHAYA GUSAU (SOKOTO) ANNOUNCED THAT
THEY WOULD NOT OPPOSE DELETION OF THIS PROVISION FROM THE
CONSITITUTION. ACCORDING TO THE DAILY TIMES AFTER THE
PROVISION WAS DELETED, OPPONENTS OF SHARIA REALIZED THEY
MAY HAVE PUSHED THEIR CASE TOO FAR AND MODERATE 'CHRISTIAN
MEMBERS' PROPOSED AN AMENDMENT, WHICH WAS UNANIMOUSLY
ADOPTED, RESTORING THE PROVISION THAT ALLOWS GOVERNORS TO BE
SWORN IN BY A QADI.

16. COMMENT: WITH EXCEPTION OF THE INITIAL FUROR OVER
THE ADOPTION OF THE EXECUTIVE PRESIDENCY CONCEPT, THE CA
APPEARS TO HAVE FUNCTIONED SMOOTHLY IN ITS FIRST FEW
WEEKS OF SERIOUS ACTIVITY. WE WERE IMPRESSED BY THE CA'S
REJECTION OF REQUEST TO CHANGE ITS RESTRICTION ON THE
PRESIDENT'S WAR POWERS AS THE APPEAL MUST HAVE BEEN
BACKED BY THE MILITARY. WE WERE ALSO IMPRESSED BY ITS
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REJECTION OF THE REQUEST TO ESTABLISH NSO IN THE
CONSITITUION AS OBVIOUSLY AT LEAST PART OF THE SMC AND
THE NSO, IN PARTICULAR, WAS BEHIND THIS EFFORT. CA'S
DECISIION ON BOTH THESE CASES SHOULD HELP IMPROVE
ITS PUBLIC IMAGE.

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17. REJECTION OF THE NATIONAL PRESS COMMISSION DOES NOT AUGUR WELL FOR THE ADVOCATES OF EXPANSION OF GUARANTEES FOR THE PRESS, BUT IT IS STILL TOO EARLY TO MAKE ANY JUDGMENT ON THIS CONTROVERSIAL QUESTION.

18. MANEUVERING ON THE SHARIA COURT WAS INTERESTING AND WE ARE INCLINED MORE THAN EVER TO BELIEVE THAT A COMPROMISE ON THIS ISSUE IS LIKELY. ACCMRDING TO THE PRESS THE CA IS EXPECTED TO TAKE UP THE JUDICIARY AS THE NEXT MAJOR SUBJECT.

19. WE WOULD GIVE THE CAN AN 'A' FOR ITS PERFORMANCE OVER THE PAST FEW WEEKS. APPARENTLY BARRING THE PRESS AND PUBLIC FROM ITS MEETINGS HAS ALLOWED MEMBERS TO CEASE POSTURING FOR PERSONAL POLITICAL REASONS AND TO TURN TO SERIOUS POLITICKING AND CONSTITUTIONAL DRAFTING.
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